

(2) Has already passed; or
 (3) During which no milk production was produced by the dairy operation.

(b) For FY 2009, if the operation signs its FY 2008 through 2012 MILC contract within 30 days of the beginning of the application period it can pick any preceding FY 2009 month as its start month for that period or can use the normal rule of paragraph (c) of this section to pick the start month.

(c) Except as provided in paragraph (b) of this section, the start month for a fiscal year may only be

(1) For the fiscal year in which the contract is submitted, the month the contract is submitted or

(2) For a fiscal year that has not yet begun, any month, provided that a month may not be selected after the 14th of the preceding month.

(d) Dairy operations may change the production start month on or before the 14th day of the month previously selected.

(e) If a change of the production starting month is not made by the dates required by paragraph (d) of this section, the MILC production starting month cannot be changed until the next fiscal year. If the selected MILC production starting month is never modified, it will remain the same throughout the duration of the contract.

(f) MILC payments will be made consecutively to the dairy operation on a monthly basis after the production starting month has been designated until the earlier of the following:

(1) Payment quantity is reached in accordance with § 1430.207; or

(2) The end of the applicable fiscal year.

(g)(1) MILC production start month selections made during the signup period designated by CCC may be made as provided in paragraph (b) of this section, otherwise MILC production start month selections must be made in accordance with paragraph (c) of this section. If a payment rate is not in effect during the production start month selected by the dairy operation, payments to the dairy operation will be issued based on the next consecutive month with a payment rate in effect following the MILC production start month selected by the dairy operation.

Production in months in which the pay formula does not produce a payment will not count against the fiscal year's poundage limit for the operation.

(2) Dairy operations with MILC production start months that begin with the month a MILC contract is submitted to FSA or that begin with the first month of the fiscal year with an effective payment rate will receive payments made by CCC consecutively on a monthly basis, if otherwise provided for in this part, until the earlier of the following:

(i) The maximum payment quantity for the fiscal year or month is reached as determined in accordance with § 1430.207 or

(ii) The end of the applicable fiscal year.

(h) All producers involved in the dairy operation must agree to the month designated. The dairy operation assumes the risk of not reaching the maximum payment quantity based on the month selected by the dairy operation. Payments will not be issued for past months for the sole purpose of reaching the maximum payment quantity.

[71 FR 19622, Apr. 17, 2006, as amended at 73 FR 73766, Dec. 4, 2008]

§ 1430.206 [Reserved]

§ 1430.207 Dairy operation payment quantity.

(a) The applicant's payment quantity of milk will be determined by CCC, based on the quantity of milk that was produced and commercially marketed by each dairy operation per fiscal year.

(b) The maximum quantity of eligible production for which dairy operations, per separate and distinct operation, are eligible for payment per fiscal year under this subpart will be:

(1) 2,400,000 pounds (24,000 cwt.) for FY 2008 (October 1, 2007, through September 30, 2008);

(2) 2,985,000 pounds (29,850 cwt.) for FY 2009 (October 1, 2008 through September 30, 2009), FY 2010 (October 1, 2009, through September 30, 2010), FY 2011 (October 1, 2010, through September 30, 2011) and FY 2012 (October 1, 2011, through September 30, 2012), provided further an operation may receive

payment for September, 2012, marketings only if its pre-September FY 2012 marketings did not exceed 2,400,000 pounds in which case new marketings that would not put the operation's FY 2012 marketings over 2,400,000 pounds will be eligible for payments otherwise permitted in this rule.

(c) In accordance with these regulations, the Deputy Administrator will determine what is a separate and distinct operation. That decision will be final

[67 FR 64476, Oct. 18, 2002, as amended at 73 FR 73767, Dec. 4, 2008]

§ 1430.208 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations when the Boston Class I milk price under the applicable Federal milk marketing order is below \$16.94 per cwt. No payments will be made to dairy operations for marketings during the months that the Boston Class I milk price under the applicable milk marketing order is equal to or exceeds \$16.94.

(b) A per-hundredweight payment rate will be determined for the applicable month by:

(1) Subtracting from \$16.94 the Class I milk price per cwt. in Boston;

(2) Multiplying the difference by 34 percent for marketings during the period beginning on October 1, 2007, and ending on September 30, 2008;

(3) Multiplying the difference by 45 percent for marketings during the period beginning on October 1, 2008, and ending on August 31, 2012; and

(4) Multiplying the difference by 34 percent for marketings in September 2012.

(c) The payment rate as calculated as specified in paragraph (b) of this section, will be adjusted to compensate for feed prices when the National Average Dairy Feed Ration Cost for a month is greater than the levels set in paragraphs (c)(1) and (c)(2) of this section. The National Average Dairy Feed Ration Cost per cwt. for each month will be calculated using the same procedures used to calculate the feed components of the estimated price of 16 percent Mixed Dairy Feed per pound noted on page 33 of the USDA monthly Agricultural Prices publication (including

the data and factors noted in footnote 4). The payment rate adjustment for Entire Month feed prices will be determined by increasing \$16.94 by the percentage that is 45 percent of the percentage by which the National Average Dairy Feed Ration Cost exceeds \$7.35 per cwt. (except that \$7.35 will be \$9.50 for September 2012 marketings.)

(d) Each eligible dairy operation payment will be calculated, as determined by the Secretary, by:

(1) Converting whole pounds of milk to hundredweight and

(2) Multiplying the payment rate determined in paragraphs (b) and (c) of this section by the quantity of eligible production marketed by the operation during the applicable month as determined according to § 1430.205 and other provisions of this subpart.

(3) Payments to dairy operations will be based on calculated payment rates rounded seven places to the right of the decimal.

(e) Payments under this subpart may be made to a dairy operation only up to the maximum production limitations set in § 1430.207(b) of eligible production per applicable fiscal year.

(f) Dairy operations receiving benefits under this subpart, will receive earned payments on a monthly basis according to the MILC contract, to the extent practicable, not later than 60 days after the later of production evidence and all supporting documents for the applicable month are received by CCC or the entire month National Average Dairy Feed Ration Cost is made available by USDA, as applicable. Payments issued by CCC more than 60 days after the later of all production evidence and supporting documentation are received by CCC or the entire month National Average Dairy Feed Ration Cost is made available by USDA, whichever is later, will be subject to prompt payment interest as allowed by law. However, CCC will endeavor where possible to make payments within 60 days of the end of the marketing month.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19623, Apr. 17, 2006; 72 FR 48231, Aug. 23, 2007; 73 FR 73767, Dec. 4, 2008]